

### DETAILED ACTION

The examiner of your application in the USPTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Art Unit 1648, examiner Mosher.

The replies filed on 5/4/2010 and 6/3/2010 are not fully responsive to the prior Office Action because of the following omission(s) or matter(s): they do not include an election of species as required by the action mailed 5/14/2010. See 37 CFR 1.111. Since the above-mentioned reply appears to be *bona fide*, applicant is given **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

In response to applicant's argument that there was no rationale provided for further species election, attention is directed to page 5, section 5 in the action mailed 3/5/2010. The technical feature that is common to all the species is the use of a nonpathogenic insect-specific virus. This does not constitute a special technical feature because it is not novel, being taught in the same Gordon et al patent (US 7251654, column 5, lines 42-54) that was cited in to show lack of unity between groups. Additional references can be cited to further demonstrate the absence of a special technical feature that unites the species, for example Hilbert et al US 6001806 teaches use of baculovirus GP64 to treat cancer, see the abstract and column 38 lines 60-63; McGarvey et al US 2001/0000228 teaches use of a live recombinant baculovirus to treat liver cancer, see claims 24 and 27. Consequently, unity of invention is absent for the

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various species claimed. Although a showing of burden is not required for unity-of-invention considerations, such burden does exist here. There is burden involved in examining the different species, since there are divergent search requirements for the different species and different issues of enablement. Therefore applicant's request to withdraw the species election requirement is denied.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mary E. Mosher whose telephone number is (571)272-0906. The examiner can normally be reached on varying dates and times; please leave a message.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zachariah Lucas can be reached on 571-272-0905. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Mary E Mosher/  
Primary Examiner, Art Unit 1648

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